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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/410,999	10/01/1999	CHRISTOPHER COSGROVE CREAGAN	13098	7748

7590 11/27/2002  
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NEENAH, WI 54957-0349

EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/27/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

AS/6

**Office Action Summary**

Application No. 09/410,999		Applicant(s) CREAGAN ET AL.	
Examiner Alicia Chevalier		Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **RESPONSE TO AMENDMENT**

### ***REJECTIONS REPEATED***

1. The 35 U.S.C. §103 rejection of claims 1, 2 and 4-15 over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) is repeated for reasons previously of record in paper #14, pages 2-4, paragraph #4.
2. The 35 U.S.C. §103 rejection of claims 3 and 16 over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) and further in view of Powers (5,597,647) is repeated for reasons previously of record in paper #14, pages 5-6, paragraph #5.

### ***NEW REJECTIONS***

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

### ***Claim Rejections - 35 USC § 103***

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) for reasons previously of record in paper #14, pages 2-4, paragraph #4.
5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) as applied to claims 1, 2, 4-15 and 17, and further in view of Powers (5,597,647) for reasons previously of record in paper #14, pages 5-6, paragraph #5.

Art Unit: 1772

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) for reasons previously of record in paper #14, pages 2-4, paragraph #4.

The combination of Bishop, Thompson, and Proxmire teach all the limitations of the instant claimed invention except the creased layer comprises creases with a depth between 0.25 mm and 2 mm and a frequency between 5 and 100 creases per centimeter. The depth and frequency of creases per centimeter is deemed to be a cause effective variable with regard to liquid handling capability. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as depth and frequency of creases through routine experimentation in the absence of a showing of criticality in the claimed combined thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill would be motivated to optimize the depth and frequency of the creases in order to increase the amount of liquid capable of being handle by the layer.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

7. Applicant's arguments filed in paper #15 regarding the 35 U.S.C. §103 rejection of claims 1, 2 and 4-15 over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) of record have been carefully considered but are deemed unpersuasive.

Before addressing the rejections of record Applicant points out specifics of the invention. This new description of the claimed invention is slightly different from what Applicant has

Art Unit: 1772

previously argued and described. In Amendment A, paper #8, filed October 11, 2001. Applicant described their invention as “a surge material that has a creased layer with at least one layer of less dense fibers adjacent to it. This structure is clearly visible in Applicants’ figure 1 and may best be considered as a “filled” creased layer. The creased layer gives the structure compression resistance and the less dense layer(s) gives the structure control of the fluid movement in the valleys,” page 3, last paragraph. The Examiner believes this point to be the heart of the invention, yet the claims have not been amended to include such limitations which are clearly supported by figure 1 and the specification on page 10, lines 4-6.

Applicant also points out that a surge layer is one of several layers of a personal care product. It has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitations. *Ex parte Macham*, 2 USPQ2d 1647 (1987). Furthermore it must be noted that the structure of claim 1 only requires two layers, which are disclosed in the combination of Bishop, Thompson and Proxmire.

In response to Applicant’s piecemeal analysis of the references, it has been held that one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references. *In re Keller*, 208 USPQ 871 (CCPA 1981).

Applicant argues that Thompson does not teach that one of the layers of the pleat or creased layer is compression resistant, and that the other layer has a density less between 0.01 and 0.05 g/cc. First, the Thompson reference was not used to argue the density of the second layer. Second, the limitation “compression resistant” was only considered as part of the creasing of the first layer. I.E. if the layer is crease it will have the required compression resistance of the

Art Unit: 1772

claims. Furthermore, in view of Applicant's previous arguments that the compression resistant property is gained from the structure of figure 1 the arguments regarding the compression resistant properties are not found to be commensurate in scope with the claims. To be commensurate in scope with the claims, limitations directed to the "filled" creased layer must be added to the claim.

Applicant further argues that there is no suggestion in Thompson to use polyethylene/polypropylene conjugate fibers in the pleated layer, as is required by claim 8 or to use conjugate fibers in the second layer. As stated above, the Thompson reference was not used to argue the properties of the second layer. Furthermore, Thompson was only used to show the benefit of creasing the surge layer in Bishop. Bishop's surge layer uses a spunbond nonwoven polyethylene/polypropylene bicomponent (conjugate) fibrous web.

Applicant argues that Bishop and Thompson do not teach the surge layer in a three layer structure. It is pointed the claim only requires three layers which Bishop clearly teaches a three layered structure and the combination of Bishop, Thompson and Proxmire disclose all the limitations of the claimed invention. The claims do not recite a two layered surge layer in addition to an absorbent layer and a body liner layer, the claims only require two layers. It must be noted that the combination of Bishop, Thompson and Proxmire discloses the invention as claimed.

Applicant further argues that the Examiner has not stated why one skilled in the art would have been motivated to apply the teachings and technology of the body side liner to the surge layer, which is a separate layer from the body side liner. First, the examiner relies on the Proxmire reference to modify the body side liner in Bishop, not the surge layer. Secondly, the

Art Unit: 1772

claim merely encompasses two layers, which is clearly taught by the combination of Bishop, Thompson and Proxmire. It has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitations.

Applicant's further arguments regarding the difference between a body side liner and a surge layer are moot in view of the above arguments.

8. Applicant's arguments filed in paper #15 regarding the 35 U.S.C. §103 rejection of claims 3 and 16 over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) and further in view of Powers (5,597,647) of record have been carefully considered but are deemed unpersuasive.

Applicant argues that the present invention is not claiming a body side liner nor an absorbent layer. However, as pointed out above a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitations. Furthermore, the body side liner and the absorbent layer satisfy the limitations of the claim.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 1772

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

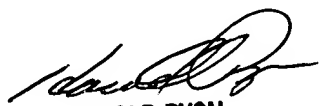
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

11/20/02



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772 11/25/02